EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

90-934

No.

Supreme Court, U.S.
FILED
OCT 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

ABEL H. HERNANDEZ, PETITIONER

V.

DONALD B. RICE, SECRETARY OF THE AIR FORCE

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MR. ABEL H. HERNANDEZ
7303 GLEN HAVEN STREET
SAN ANTONIO, TEXAS 78239
(512) 653-0810
OR
333-1600

I.

Questions Presented

Did the Fifth circuit court of appeald err when it denied Petitioner Motion for leave out of time. Sauders & Smith V. Metropolit an area Transit Authority.505 F.2d 331 (19 74) Motion for leave to file bill of costs out of time grant,by the united states cou rt of appeals,district of columbia circuit.

STATUTE

FRAP RULE 39 COSTS (e) (b) (c) Page 3

AUTHORITIY

Sauders & Smith V. Metropolitan area Tr ansit Authority. 505 F.2d 331 U.S. COURT O f Appeals,District of Columbia Circuit. (1 974).

Jurisdiction

28 U.S.C. 1254 (1) Page 3.

Appendix A IA
Appendix B 2B
Appendix C 4C
Appendix D 10D
Appendix E 12E Exhibit P-1

Did the Fifth Circuit Court of Appeals at New Orleans,LA.. Err when Circuit Judge Sam D. Johnson (999 Austin Texas 78701 (512) 48-5721),Concur with Assistance U.S. Attorney Jack B. Moynihan,Ronald F. Ederer U. S. Attorney. 727 E. Durango Blvd., A-601 San Antonio,Texas 78206.

On Appellee's Objection to Appellant's Motion for leave to File Bill of Costs Out of Time. On July 13,1990.

Petitioner Appellant Motion for Leave toFile Bill of Costs Out of Time, on July 9 1990. From a prious Order to Defendant Appellee To Pay to Petitioner the Costs on Appeal,on July 5,1990.

Judgment on Remand From the United States Supreme Court before Clerk, Chief Judge, Johnson and Jolly, Circuit Judges.

JUDGMENT

This cause came on to be heard on remand from the Supreme Court of the United States.

Order and Judgment to defendant to pay to Appellant Costs on Appeal on June 5,1990.

14 days to File Bill of Cost. Ran from June 5.,1990 to June 19, 1990.

On June 12,1990 Petitioner went to see DR. Joe W. Tippett,M.D. 4203 E. SouthCross San Antonio,Texas 78222 Tel 337-5785. SouthEast Baptist Hospital. 4214 E. south Cross (512) 222-8431.

Petitioner was recovering from sick leave. on are about July 6,1990 petitioner call the U.S. Fifth Circuit Clerk.

I ask her if could file Bill of out tim e ,because I had been on sick leave,on a knee injury. She said "you can file make a Motion for leave to file Bill of Cost out of time.

SEE-SAUDERS & SMITH V. METROPOLITAN ar ea Transit Authority. 505 F2d 331 United States Court of Appeals, District of Colu bia Circuit (1974).

On Motion Leave to File Bill of Cost out of time. page 331 The Court of Appea

ls said " failure to File Bill of Cost wit hin 14 days did not preclude (prevent) rec overy. MOTION GRANTED:

Petitioner prays that United States Supreme Court Grant Writ of Certiorari, & that Defendant pay Petitioner Costs on App eal & Petition to Supreme Court Costs.

Under FRAP RULE 39 (b).

The United States Supreme Court has jur isdiction under 28 U.S.C. 1254(1).

Respectfully Submitted

Signed- Abel H. Hernandez

MR. ABEL H. HERNANDEZ

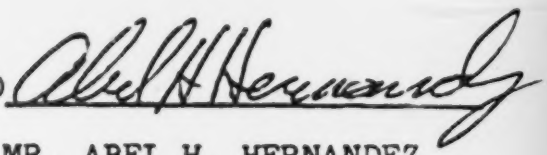
DATE OCTOBER 17,1990.

CERTIFICATE OF SERVICE

I ABEL H. HERNANDEZ, DO HEREBY CERTIFY THA T THREE COPIES EACH OF THE FORE GOING PETI TION FOR A WRIT OF CERTIORARI TO THE UNITE D STATES COURT OF APPEALS FOR THE FIFTH CI RCUIT WAS MAILEE, POSTAGE PREPAID, TO THE SOLICITOR GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON,D.C. 20530 .

ON OCTOBER 17,1990.

RESPECTFULLY SUBMITTED

SIGNED 

MR. ABEL H. HERNANDEZ

7303 GLEN HAVEN STREET

SAN ANTONIO,TEXAS 78239

(512) 653-0810 or 333-1600

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-5603
Summary Calendar

D.C. Docket No. SA 88 cv 237

ABEL H. HERNANDEZ,
PLAINTIFF-APPELLANT,
V.

EDWARD C. ALDRRIDGE,III
SECRETARY, DEPARTMENT OF THE
AIR FORCE,
DEFENDANT-APPELLEE.

JUDGMENT ON REMAND FROM THE UNITED STATE S SUPREME COURT Before CLERK, Chief Judge JOHNSON.and JOLLY, Circuit Judges.

JUDGMENT

This cause came on to be heard on rema nd from the Supreme Court of the United States.

ON CONSIDERATION WHEREOF, It is now her e ordered and adjudged by this Court that the opinion originally entered by this Court on March 1,1989, is vacated; and the judgment of the District Court appealed fr om is reversed, andthe cause is remanded t o the District Court for further proceedi ngs in accordance with the opinion of thi

s Court.

IT IS FURTHER ORDERED that defendant-app ellee pay to plaontiff-appellant the Cost s on appeal tobe taxedby the Clerk of this Court.

June 5,1990

GILBERT F. GANUCHEAU

CLERK

By Marilyn L. Fayle

Deputy

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 88-5603

ABEL H. HERNANDEZ,

PLAINTIFF-APPELLANT,

V.

EDWARD C. ALDRIDGE, III
SECRETARY, DEPARTMENT OF THE
AIR FORCE,

DEFENDANT-APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT

COURT FOR THE WESTERN DISTRICT OF TEXAS

ORDER:

IT ORDERED THAT THE MOTION OF APPELLA

NT FOR LEAVE TO FILE BILL OF COSTS OUT OF

TIME IS DENIED.

SAM JOHNSON

UNITED STATES CIRCUIT
JUDGE

7-20-90

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 88-5603

ABEL H. HERNANDEZ,

PLAINTIFF-APPELLANT,

V.

EDWARD C. ALDRIDGE,III
SECRETARY, DEPARTMENT OF THE
AIR FORCE,

DEFENDANT-APPELLEE.

APPELLANT'S MOTION TO OBJECT OF APPELL EE'S OBJECTION FOR LEAVE TO FILE BILL OF COSTS OUT OF TIME BY APPELLANT.

IN RESPOND TO APPELLEE'S OBJECTION TO APPELLANT'S MOTION FOR LEAVE TO FILE BILL OF COSTS OUT OF TIME . ON JULY 13,1990. Assistance United States Attorney Jack B. Moynihan to Ronald F. Ederer OR their Secretarit (a group of Officials and emp loyees that perform the administrative and Secretarial duties of a large Organi

THEY STATES "BECAUSE APPELLANT HAS GIVEN NO REASON FOR NOT FILING HIS BIL OF COSTS IN A TIMELY MANNER".

APPELLANT REASONS FOR NOT FILING A BILL COSTS ON TIME. APPELLEE'S STATES " LAST DA Y TO FILE BILL OF COSTS WAS JUNE 19,1990". PLAINTIFF WAS ON SICK LEAVE ON JUNE 25,19. ATTACH IS DR. CERTIFIED PROFFESSIONAL CARE CERTIFICATE.

APPELLANT PRAYS MOTION FOR LEAVE TO FI- LE BILL OF COSTS OUT OF TIME.

7303 GLEN HAVEN STREET
SAN ANTONIO,TEXAS 78239
TEL (512) 653-0810

RESPECTFULLY SUBMITTED

SIGNED _____
ABEL H. HERNANDEZ
DATE JULY 19,1990

DISABILITY CERTIFICATE

DATE 6/12/90

Name of Company: Kelly AFB

TO WHOM IT MAY CONCERN:

This is to certify that Abel Hernandez has been under my professional care from 6/12/90 to cont.

He/She may return to work on 6/19/90 with the following limitations: To be determined. None

Revisit: YES ✓ DATE: 6/18/90 NO

Referral to Dr. ✓

(If you are unable to get a prompt appointment with the referral M.D., call the Emergency Room for alternate referral.)

If you have any questions, please contact Alamo Physicians Services or the hospital Emergency Room where you were treated.

Thank You.

Alamo Physicians Services

P.O. Box 298

San Antonio, TX 78291 Telephone: (512) 829-7173

W. Joe Tippett M.D.

BMHS 3599-8 Rev. 5/87

SOUTHEAST ORTHOPAEDIC CLINIC, P.A.
JOE W. TIPPETT, M.D.
4203 E. SOUTHCROSS
SAN ANTONIO, TEXAS 78222
512-337-5785

/Appendix C
/ 7C

DATE: 6-18-90

NAME: Abel Hernandez

___1) May return to light duty on _____
From _____ to _____
Restrictions _____

___(2) ~~May return to regular duty on~~ 6-25-90

___3) Will be out of work from _____
to _____

___4) Was out of school from _____
to _____

___5) May not participate in sports or PE
for _____

___6) May return to sports and PE on _____

___7) Has another appointment on _____

___8) Brought self/child/spouse to my office
on _____

___9) Diagnosis _____

__10) Is scheduled for surgery on _____

Joe W. Tippett, M.D.

Appendix C 8C

SACU

San Antonio Credit Union
P.O. Box 1356
San Antonio, Texas 78295-1356
512/734-1414

MONEY ORDER

K- 352598283

DATE	SEQUENCE NUMBER	CHECK NO.
[illegible]	[illegible]	[illegible]

NOT GOOD FOR MORE THAN $1,000.00

50-1042
223

[illegible] ---------- SER--8-88-[illegible]

DRAWER: SAN ANTONIO CREDIT UNION

SAN ANTONIO CREDIT UNION 1050

AMOUNT

PAY TO THE ORDER OF
U.S.DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

ABEL H.HERNANDEZ 406 "H" STREET SAN ANTONIO TX.78220

REMITTER: Abel H Hernandez

TO CITIBANK (NEW YORK STATE) ROCHESTER, NY

AUTHORIZED SIGNATURE

:022310422: 8"458039 352598283

20674-00 105.- 18

UNITED STATES COURT OF APPEALS FOR THE

FIFTH CIRCUIT

BILL OF COSTS

ABEL H. HERNANDEZ APPELLANT V. EDWARD C. ALDRIDGE,III SECRE,AF # 88-5603 THE CLERK IS REQUESTED TO TAX THE FOLLOWING COSTS AGAINST RONALD F. EDERER U.S. ATTORNEY ,727 E. DURANGO BLVD. A 601 S.A.TX.78206

COSTS TAXABLE UNDER FRAP & LOCAL RULE 39	REQUESTED			
	#OF COPIES	PAGES PER COPY	COST PER PAGE	TOTAL COST
DOCKET FEE				$105.
APPELLANT BRIEF	190	5	10¢	$19.

TOTAL $ 124.

THIS 19,DAY OF JULY 1990

ATTORNEY PLAINTIFF APPELLANT PRO SE

Appendix C 9C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFITH CIRCUIT

ABEL H. HERNANDEZ,
PLAINTIFF-APPELLANT
V. No.88-5603
EDWARD C. ALDRIDGE,III,
SECRETARY, DEPARTMENT
OF THE AIR FORCE,
DEFENDANT-APPELLEE.

APPELLEE'S OBJECTION TO APPELLANT'S MOTION FOR LEAVE TO FILE BILL OF COSTS OUT OF TIME.

NOW COMES APPELLEE AND MAKES THE FOLLOWING OBJECTION TO APPELLANT'S MOTION FOR LEAVE TO FILE A BILL OF COSTS OUT OF TIME.

THE OPINION OF THE COURT IN THIS CASE WAS RENDERED ON JUNE 5, 1990. THE JUDGMENT ENTERED THAT SAME DAY ORDERED APPELLEE TO PAY TO APPELLANT THE COSTS ON APPEAL.

FEDERAL RULE 39(d) OF THE FEDERAL RULE OF APPELLATE PROCEDURE PROVIDES IN PERTINENT PART:

A PARTY WHO DESIRES SUCH COSTS TO BE TAXED SHALL STATE THEM IN AN ITEMIZIED AND VERIFIED BILL OF COSTS WHICH THE PARTY SH

all file with the clerk ...within 14 days after the entry of Judgment.

Thus, in this case, Appellant"s last day for Filing his Bill of Costs was June 1990, His Motion for leave to file out of time was File July 9,1990,or twenty (20) days after the expiration date, and gives no re ason for his tardiness.

Accordingly, because the provision of Ru le 39 (d) of the Federal Rule of Appellate Procedure contemplate that a Bill of Costs be File within fourteen (4) days after the entry of judgment, and because Appellant has given no reason for not filing his Bi ll of Costs in a timely manner, Appellant' s Motion for leave to file his Bill of Co sts out of time.

Respectfully Submitted

Ronald F. EDERER
UNited States Attorney
Jack B. Moynihan
Assistance United States Attorney
727 E. Durango Blvd., -
Á-601
San Antonio,Texas,78206
Tel. (512) 229-4251

I AM A MEMBER OF THE ROSICRUCIAN (1)

ORDER . EXHIBT P-1 .